**Background Summary & Questions – *Marbury v Madison***

*Directions: Read this summary and mark it up. Answer the questions at the bottom.*

**Background Summary & Questions**

Thomas Jefferson, a member of the Republican Party, won the election of 1800. The outgoing President, John Adams, proceeded to rapidly appoint 58 members of his own party to fill government posts created by Congress.

It was the responsibility of the Secretary of State, John Marshall, to "deliver the commissions," finish the paperwork, and give it to each of the newly appointed judges. Although Marshall signed and sealed all of the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job, but when Jefferson became President, he told his new Secretary of State, James Madison, not to deliver some of the commissions, because he did not want members of the opposing political party to take office. Those individuals couldn't take office until they actually had their commissions in hand.

William Marbury, whom Adams had appointed as justice of the peace of the District of Columbia, was one of these last-minute appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court of the United States to issue a *writ of mandamus*, a court order that requires an official to perform or refrain from performing a certain duty. In this case, the writ would have ordered Madison to deliver the commission.

Marbury argued that he was entitled to his commission and that the Judiciary Act of 1789 gave the Supreme Court of the United States original jurisdiction to issue a *writ of mandamus*. Madison disagreed. When the case came before the Court, John Marshall — the person who had failed to deliver the commission in the first place — was the new Chief Justice. If this situation were to arise today, Marshall would likely disqualify himself because of a conflict of interest.

**Questions**

1. Who was Marshall likely to side with, Marbury or Madison? Why?

Justice Marshall is likely to side with Marbury because he had the intentions of giving him his job in the first place. It was in some respects, his fault that this case was brought to the Supreme Court, and he probably wants to right his wrong of not getting him the letters on time.

1. If the Court decided that Marbury was entitled to the commission, how could it be sure that the executive branch would deliver it? Does the Court have the power to force compliance? What would happen if the Court issued the writ, but the executive branch refused to comply?

If the executive branch refused to listen to the judicial branch’s orders, that would be upsetting the checks and balances. The judicial branch has the right to give this official *writ of mandamus* and everyone must listen, no matter what amount of political power you have. The president would then be breaking the laws.

1. If Congress passes a law that conflicts with the Constitution, which one are we required to follow: the new law or the U.S. Constitution?

I think we have to follow the Constitution, not the new law. This is because the judicial branch would have to look over Congress’s new law and show that it is unconstitutional. If it is unconstitutional, we have no reason to follow the law. We always abide by the constitution first, unless this new law is made as an amendment to the Constitution.